IN THE HIGH COURT OF PUNJAB & HARYANA HIGH COURT AT CHANDIGARH.

Date of Decision : 3-11-2006

M/s. Amar Ujala Parkashan Ltd. Vs. Ravinder Sheel

Coram: Hon'ble Mr. Justice Viredner Singh
Hon'ble Mr. Justice A.N.Jindal

Present: Mr. B.D.Sharma, Advocate, for the applicant-appellant.

ORDER

A complaint under Section 138 of the Negotiable Instruments Act (for short the `Act') was filed against the respondent on account of dishonoring of cheque amounting to Rs.75,000/-. After the respondent had put in appearance, notice of accusation as envisaged under Section 251 of the Code of Criminal Procedure was served upon him. During the stage of recording the evidence of the appellant/complainant on one of the dates i.e. 9-3-2006 neither the complainant nor his counsel appeared before the trial Court. Consequently vide impugned order the complaint was dismissed in default for want of prosecution and the respondent was acquitted. Aggrieved against the said order, the appellant/complainant has preferred the instant appeal.

An application (bearing Criminal Miscellaneous No. 385-MA of 2006) under Section 378(4) of the Code of Criminal Procedure has also

been filed for grant of special leave to appeal.

We have heard Mr. B.D.Sharma, learned counsel for the appellant and with his assistance gone through the petition and the documents annexed therewith.

Mr. Sharma contends that the representative of the appellant, namely Sh. Atul Vashist, had been appearing before the trial court and was pursuing the complaint diligently. The case was fixed for 9-3-2006 for cross-examination of the appellant, on which date while coming to Court Sh. Vashist had met with an accident and suffered an injury on his ankle. For this reason he could not reach the Court. He had consulted Dr. Shubhang Aggarwal, Orthopaedic Surgeon, Satyam Hospital, Jalandhar, who had issued a certificate in this regard. Mr. Sharma then submits that for placing on record the said certificate the appellant has moved a separate application (Crl. Misc. No. 42327 of 2006).

Mr. Sharma on the basis of aforesaid facts submits that the absence of the representative of the appellant was not at all intentional but on account of the aforesaid unavoidable circumstance and, therefore, the appellant should not be deprived of his right of pursuing the complaint and the acquittal earned by the respondent in this case has caused a great loss to the appellant.

On the basis of the aforesaid submissions, the learned counsel prays that the impugned order be set-aside and the complaint be restored for decision afresh, after affording proper opportunity to the appellant to lead his entire evidence.

We do not find ourselves in agreement with the submissions advanced by Mr. Sharma for the reason that the certificate (Annexure P1) dated 10-3-2006, on which he is relying very heavily to show his bonafides does not make it clear as to on which date the representative of the appellant had consulted the concerned Orthopedic Surgeon. The said certificate reads as under:-

"10th March, 2006

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Atul, resident of Jalandhar, consulted me for injury to his ankle and was diagnosed to be having a deltoid ligament sprain and a doubtful undisplaced posterior malleous fracture. He was subsequently put in a below knee cast which was removed today, he has to follow up with me only after a week.

Sd/-

Dr. Shubhang Aggarwal,
Orthopedic Surgeon
Satyam Hospital,
Jalandhar"

A perusal of the aforesaid certificate does not give any indication with regard to date of sustaining of the injury by representative of the appellant. Therefore, in our view the appellant has not been able to project the bonafides for his absence on 9-3-2006, the date fixed before the trial Court.

The respondent was facing trial under Chapter XX of the Code

of Criminal Procedure (for short the `Code'), which relates to trial of summons cases by the Magistrates. He has earned acquittal under Section 256 of the Code, which reads as under:

> "**256. Non-appearance or death of complainant.**-(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:
>
> Provided that where the complainant is represented by a pleader or by the officer conducing the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with the attendance and proceed with the case.
>
> (2) xxx xxx xxxx"

The admitted position is that in the instant case neither the appellant nor his representative nor his pleader appeared before the Court and, therefore, the learned trial Court has rightly acquitted the respondent as there was no material with the Court to adjourn the hearing of the case to some other date.

Finding no illegality, we feel ourselves hesitant in granting special leave to appeal against the impugned order resulting into acquittal of respondent.

Consequently Criminal Miscellaneous No. 384-MA of 2009 for special leave to appeal is dismissed.

Before parting with the order, we may observe that the affidavit filed by Sh. Atul Vashist son of A.R.Vashist is not proper as there is an ambiguity in the averments made in para 2. We, however, do not take a serious note of it as the same has no bearing on merits of the case.

[Virender Singh]
Judge

[A.N. Jindal]
Judge

November 3, 2006
`ask'